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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,636	06/27/2003	Bearge Miller	MEI-P12.1-US	8734
21616 7590 08/14/2007 LAW OFFICES OF MARK A. GARZIA, P.C. 2058 CHICHESTER AVE BOOTHWYN, PA 19061			EXAMINER LUU, THANH X	
			ART UNIT 2878	PAPER NUMBER
			MAIL DATE 08/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/607,636

Applicant(s)

MILLER ET AL.

Examiner

Thanh X. Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to amendments and remarks filed July 16, 2007.

Claims 1-17 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-8, 10 and 13-17, are rejected under 35 U.S.C. 102(b) as being anticipated by Whitaker (U.S. Patent 5,233,185).

Regarding claims 1-4, 6-8, 10 and 13-17, Whitaker discloses (see Figs. 2 and 4) a safety system for controlling movement of an automatically operated overhead door, the overhead door including an overhead door (11) that moves in a vertical direction and that rides in two tracks (15) on either side of the door, an electric motor (16), means for connecting the motor to the door (17, 18) so that when the motor turns in one direction the door lowers, and when the motor turns in the opposite direction, the door rises, and a control system (13) for starting and stopping the motor thereby controlling movement of the door, the safety system comprising: a pair of spring-loaded leg assemblies (at 55) mounted on either side of the door near the door's leading edge; each leg assembly has an outer tube and at least one inner tube (tubes not labeled) having an exterior dimension smaller than the interior dimension of the outer tube so that the inner tube can be telescopically inserted into the outer tube; a spring (at 55)

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mounted inside the tubes to apply an outward axial force between the tubes; an optical transmitter (transmitting fiber together with the transmitter 45) mounted on the inner-most tube of one leg; and optical receiver (receiving fiber together with the receiver 46) mounted on the inner-most tube of the other leg, the optical transmitter sending an optical beam to the optical receiver; sensing circuit (14) electrically connected to at least the optical receiver for determining if the optical beam is broken, the sensing circuit connected to the control system for controlling operation of the motor. As understood, since the transmitter and receivers are in front of a leading edge of the door and are retracted by contact with the ground or the garage floor, they are held at an "appropriate" distance to compensate for over-travel of the door. Furthermore, as understood, the length of the legs "can" be adjusted as desired. Whitaker further discloses (see Fig. 4) a pin (where fiber holder enters the tube) and slot (hole for the fiber holder) that limit the nesting of the inner tubes within the outer tubes.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitaker in view of Lin et al. (U.S. Patent 6,176,246).

Regarding claim 5, Whitaker discloses the claimed invention as set forth above.

Whitaker does not specifically disclose multiple inner tubes as claimed. Lin et al. teach

(see Figs.) using multiple tubes in a telescopic assembly to provide a longer length.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide multiple inner tubes as claimed in the apparatus of Whitaker in view of Lin et al. to provide a desired length for optimal operation.

5. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitaker.

Regarding claim 9, Whitaker discloses the invention as set forth above. Whitaker does not specifically disclose the tubes having a square cross-section. However, choosing the particular shape of the tubes is a matter of design choice and would require only routine skill in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide square cross-section tubes in the apparatus of Whitaker as desired.

Regarding claim 12, Whitaker discloses the invention as set forth above. Whitaker does not specifically disclose how the leg assemblies are attached to the door. Whitaker also teaches (see Fig. 3) using metal tabs (53) as an attachment means. Furthermore, choosing a particular manner in which the tubes are attached is a matter of design choice and would require only routine skill in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the metal tabs in the apparatus of Whitaker to obtain a more resilient mount.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitaker in view of Kingsford et al. (U.S. Patent 6,203,071).

Regarding claim 11, Whitaker discloses the claimed invention as set forth above.

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Whitaker does not specifically disclose hatch marks as claimed. Kingsford et al. teach (see Figs.) using hatch marks for improved ease in assembly of parts. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide hatch marks as claimed in the apparatus of Whitaker in view of Kingsford et al. to improve assembly of the device.

Response to Arguments

7. Applicant's arguments filed July 16, 2007 have been fully considered but they are not persuasive.

Applicant asserts that Whitaker does not disclose telescoping leg assemblies. Examiner disagrees. Contrary to Applicant's erroneous conclusion, one of ordinary skill in the art would recognize from Fig. 4 and from the description ("a retractable spring device") that the assembly of Whitaker does telescope as in Applicant's invention. Furthermore, although Whitaker discloses disadvantages, Applicant conveniently ignores the advantages discussed by Whitaker. One has to recognize that there are advantages and disadvantages in every situation. In addition, just because disadvantages are discussed does not mean the limitation is not disclosed.

Applicant also asserts that Whitaker does not disclose compensating for over-travel of the door. Examiner disagrees. Nowhere does Applicant claim how over-travel is compensated. Contrary to Applicant's remarks, Whitaker discusses that the device retracts with contact with the ground or garage floor. Clearly, in order for the device to retract in that way, the mount has to overhang in front of the leading edge of the door. Furthermore, Fig. 4 shows the device in front of the leading edge of the door. As

understood, by virtue of this overhang, over-travel is compensated.

Lastly, Applicant asserts that the prior art does not disclose changing the length of the tubes. However, the claim language is not precise. Examiner clarifies that because the language "can be adjusted" is used, one of ordinary skill in the art "can" adjust the length as desired.

Thus, as set forth above, this rejection is proper.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh X. Luu whose telephone number is 571-272-2441. The examiner can normally be reached on M-F 6:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for

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the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thanh X Luu
Primary Examiner
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08/2007